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October 27, 2015

VIA ECF

Hon. Vernon S. Broderick
United States District Court
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 415
New York, NY 10007

**Re: *Laura Dwight v. John Wiley & Sons, Inc.*, No. 14-cv-6742
(VSB) (S.D.N.Y.)**

Dear Judge Broderick:

We are counsel to Defendant John Wiley & Sons, Inc. (“Wiley”) in the above-captioned actions. We write to object to the Responses to Defendant’s Notice of Supplemental Authority filed by Plaintiffs Laura Dwight, *see* 14-cv-6742, Dkt. No. 69; Mark E. Gibson, *see* 14-cv-6743, Dkt. No. 66; and Louie Psihoyos, *see* 14-cv-6744, Dkt. No. 83 (the “Responses”) as improper surreplies and request that this Court not consider the arguments they contain in ruling on Wiley’s pending summary judgment motions.

On September 17, 2015, Wiley filed a less than two-page Notice of Supplemental Authority in each of these cases, informing the Court of Magistrate Judge Peck’s report and recommendation issued one week prior which recommended granting in large part of Wiley’s motion for summary judgment in *Wu v. John Wiley & Sons, Inc.*, No. 14 Civ. 6746 (AKH) (AJP), Dkt. No. 58 (S.D.N.Y.). *See* 14-cv-6742, Dkt. No. 66; 14-cv-6743, Dkt. No. 63; 14-cv-6744, Dkt. No. 77. A notice of supplemental authority is of course “commonly used in the federal court system to alert the Court to a decision of another court issued after the close of the briefing period.” *Sisk v. Abbott Labs*, No. 11-cv-159, 2012 WL 1164559, at *1 (W.D.N.C. Apr. 9, 2012); *see Honor, Townsend & Kent, Inc.*, 01-cv-2979, 2004 WL 2284503, at *11 (N.D. Ga. Sept. 30, 2004) (same). In each notice, Wiley briefly described relevant sections of the report and recommendation, but did not argue its application to these actions or discuss any other cases.

More than a month after Wiley filed its notice, the plaintiffs in these cases filed nearly identical Responses containing eight-pages of argument, including citations to the record of each




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action and to authority issued before the briefing period. The “[r]outine submission of a recent unpublished district court decision . . . does not open the door to the submission of new briefs.” *Sisk*, 2012 WL 1164559, at *1. Allowing such a surreply “has the potential for placing a court ‘in the position of referring an endless volley of briefs.’” *Kapiti v. Kelly*, No. 07-cv-3782, 2008 WL 754686, at *1 n.1 (S.D.N.Y. Mar. 12, 2008).

Therefore, Wiley asks this Court not to consider plaintiffs’ Responses in ruling on the motions for summary judgment in each of the three cases.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 
Robert Penchina

cc: All counsel of record (via ECF)